SUPPORTING BRIEF

Assignment of Errors

The petitioner assigns the following errors in the record and proceedings of said cause:

The Circuit Court of Multnomah County, Oregon committed reversible error in rendering a judgment against petitioner because

(1) The ordinance as construed and applied abridges and denies petitioner's rights of freedom to bring up children in the nurture and admonition of the Lord and to direct the spiritual welfare of said children and their proper worship of Almighty God Jehovah as directed in His Word, contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The ordinance as construed and applied abridges and denies petitioner's and her children's rights of freedom of speech, press, and worship of Almighty God Jehovah, contrary to the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

This noble and honorable court is now called upon to exercise its power to review a judgment of the state court for the purpose of protecting the most sacred of all human rights from encroachment by misapplied laws. That right is the God-given duty and privilege of parents to raise their children up in the nurture and admonition of the Lord and direct the children in their proper worship or service of Jehovah God.

The court below encroached unlawfully upon this right by applying an ordinance directed at commercial exploitation of children through unlawful *child labor*. It has been wrongly misinterpreted by the police officials of Portland

to cover the charitable preaching, worship and service to Almighty God by petitioner and her minor children. The *superior right* of petitioner as a parent to properly direct the spiritual welfare of her children by permitting them to engage in Godly practices not inimical to their own welface or the welfare of the state cannot be overcome by misapplication of an ordinance directed at other activity. The undisputed evidence shows that the acts engaged in by petitioner and her minor children were acts of worship of Jehovah God. Such activity does not violate the laws of morality, nor infringe personal rights of others, nor present a clear and present danger against the peace and dignity of the state. The judgment of the court below is void and should be reversed because petitioner's unalienable constitutional rights have been illegally abridged by the wrongful application of the ordinance.

The undisputed evidence shows that petitioner did not profit from the activity of her children in distributing the literature. There is no showing or contention that the activity in which they were engaged was commercial. The petitioner did not compel her children to engage in the service of the Lord but permitted them to act as Jehovah's witnesses only when they volunteered. She did not object to their engaging in such activity. The children had entered into a covenant with Jehovah to serve Him and considered it their bounden duty to preach the gospel publicly upon the streets by means of distribution of the literature in question.

Marriage and childbearing is God's arrangement for all humankind that shall live on the earth. It is beyond the power of the state to interfere with or abridge the right of all persons within its boundary to *procreate*. Even this right cannot be denied to criminals. *Skinner* v. *Oklahoma*, 316 U. S. 535. *A fortiori* the state cannot interfere with and abridge the parents' right to bring up children in a way acceptable to their own judgment so long as it is not inimical to the welfare of the children or the well-defined interest of the state.

The children must be taught by the parents to be obedient to the Lord and His commandments or rules found in the Bible. Upon the parents is placed the duty to teach their children morality, honesty, integrity, obedience and meekness and, above all, the commandments of Almighty God, JEHOVAH.

Upon all parents who are in a covenant to do God's will there is laid the duty and specific obligation to teach their children the Word of God and it is the duty of the children to obey their parents who give such instruction. The parent will be diligent to bring his children to congregations where the commandments of Almighty God are studied and discussed. The children are permitted to participate therein so that they might learn the way of righteousness and how they might receive life everlasting. When Moses stood before Jehovah's typical covenant people on the plains of Moab and delivered the instruction from Jehovah he knew that soon thereafter the children would take the place of their parents in the ranks of God's army. Forcefully he urgently reminded the parents of their duty to their children. He urged upon them diligence and faithfulness in teaching the truth to their children. That was important then; the fulfillment thereof is of greater importance now. See Deuteronomy 4:9, 10; 6:5-8; 11:18-21; 12:28; 32:46. The apostle of Christ Jesus also states the command thus: "And, ye fathers, provoke not your children to wrath; but bring them up in the nurture and admonition of the Lord." (Ephesians 6:4) The children also are commanded: "Children, obey your parents in the Lord; for this is right. . . . Honour thy father and mother, which is the first commandment with promise, that it may be well with thee, and thou mayest live long on the earth."—Ephesians 6:1-3.

"Nurture" means to discipline and train the child in the way of righteousness; and such way of righteousness God has marked out in His Word. "Admonish" means to teach and instruct; to counsel and advise the children of and in accord with the expressed will of God set forth in the

Bible. Parents who failed thus to instruct their children would be provoking their children to do wrong or to wrath. The words "right" and "righteous" are from the same root and mean the same thing.

The petitioner was glad to discharge her responsibility under the law to instruct her children in righteousness and obedience, and her children were joyfully obedient to the commandments of the Lord. The duty of the parent does not end with instruction. If the child indicates a willingness to do the will of God, the parent is under the obligation to aid the child in taking the necessary steps to serve the Lord by doing the overt act of participating in the positive command of preaching the gospel of God's kingdom to others. The petitioner did this and took her children with her in the preaching activity.

To permit the child to *believe* in righteousness and to refrain from *practicing* right is entirely wrong. "For as the body without the spirit is dead, so faith without works is dead also." (James 2:26) "Let your light so shine before men, that they may see your good works, and glorify your Father which is in heaven." (Matthew 5:15, 16) It is therefore the duty and privilege of parents and children to *practice what they preach* by consistently acting as Jehovah's witnesses before men. This the petitioner and her children have done on the streets of Portland by distributing the *Watchtower* magazine to persons of good will toward Almighty God.

In this they are doing the will of Jehovah and by their conduct they say: "I delight to do thy will, O my God." (Psalm 40:8) "Thy word is a lamp unto my feet, and a light unto my path. . . . My tongue shall speak of thy word; for all thy commandments are righteousness."—Psalm 119:105, 142, 144, 172.

It cannot be said that the children are too young to be permitted thus to worship and serve Jehovah God. The state has no authority or power to tell a child at what age it can begin practicing the requirements of Almighty God

taught it by the parent. Thus to allow the state to intervene would forever destroy and end the unalienable American heritage of the right to maintain a home, raise children and follow generally the pursuits of happiness enjoyed by a free people. The state can intervene with respect to the care and education of the child only when the parent "neglects" or "misuses" the child to such an extent as to endanger its welfare and the interests of the state. As long as the parent does not violate this fundamental rule the state cannot interfere with the "religious" practices of the parents and children.

It is not contended that petitioner neglected her duty in bringing up the children. It is not contended that she is not providing them a proper home or education, or permits them to *run at large*. It is not contended that she is exploiting the children or keeping them away from public schools. The undisputed evidence shows that the only act made the basis of the *complaint* is that she permitted the children to worship Jehovah God according to the desires of their heart and mind and the dictates of God's Word by distributing the magazine and accepting money contribution.

There is no evidence that there was a sale or that the children were offering or exposing for sale periodicals or magazines; on the contrary, the evidence clearly shows that they were preaching the gospel. "Sale" is necessarily confined to a commercial object, such as ordinary articles of merchandise. It cannot and does not include the distribution of Bible literature by one of Jehovah's witnesses simultaneously receiving money contributions. Money so received is similar to that received by recognized religious organizations or clergymen in the church edifices. When one goes to such church buildings and contributes twenty-five cents, more or less, it cannot be said that the sermon was "sold" to him. The charitable nature of the activity is not changed by the fact that the one contributing the money *thought* or testified that he "bought" a sermon or concluded that it was *sold* to him.

An examination of the entire evidence shows that petitioner's activity is charitable and non-profit. It is not contended that any of the literature was held back from anyone for want of money contribution. The evidence shows that petitioner and her children gave away free of charge as many pieces of literature to non-contributors as contributors of money had accepted from them.

There is no contention that petitioner individually profited or gained anything from the contributions given her children. The entire case is based on the false conclusion by the police who testified that a *sale* was made by the children. Constitutional rights are not dependent upon whether the one exercising them refuses to accept money contributions to aid the good work done by him. If such a distinction is sustained then the purposes of the ordinance to prevent exploitation of children could be circumvented by instructing the children to refuse to accept or offer to accept money contributions. Surely the inherent liberty of the people does not depend upon such a *fine* distinction as that.

The ordinance can be no more constitutionally applied to petitioner than could the ordinance be validly applied to Catholic priests who constantly employ and use "altar boys" in the traditional Catholic mass service throughout the nation and in the City of Portland. If this law can be sustained as to Jehovah's witnesses, then there is nothing to prevent the states and cities from prosecuting Catholic priests and parents of Catholic children who permit them to act as "altar boys" in the performance of their religious ceremonies and traditional modes of worship.

The act of serving Almighty God by preaching the gospel publicly on the streets is to petitioner and her children and other of Jehovah's witnesses a most sacred practice, and the courts should be reluctant to infringe upon the exercise of that right because of conscience' sake. The situation presented here is much different from that of a child employed to sell newspapers on the streets. Here the child is engaged in the sacred act of witnessing to the name

and honor of Almighty God, Jehovah. The words of the New Hampshire Supreme Court (*In re Roland Lefebvre et al.*, 20 A. 2d 185) seem appropriate and fitting here:

> "Loving parents who do their best for their children in support, nurture and admonition are of more worth than pecuniary means. Righteous and generous motives may be of more importance than notions that chime with majority opinions of what is good form or what is the best method of teaching patriotism. . . . But in view of the sacredness in which the State has always held freedom of religious conscience, it is impossible for us to attribute to the legislature an intent to authorize the breaking up of family life for no other reason than because some of its members have conscientious scruples not shared by the majority of the community, at least provided those scruples are exercised in good faith, and their exercise is not tinged with immorality or marked by damage to the rights of others."

It is noticed that the construction given the terms of the ordinance by the police of Portland permits a parent of a child of the prohibited age to allow the child to wander about aimlessly upon the streets with nothing to do without being subject to the terms of the ordinance. At the same time the ordinance is construed in such a manner as to permit the prosecuting of a parent who honestly directs his child in constructive activity for the child's welfare as well as that of the persons to whom the child ministers. Such construction makes the ordinance unreasonable and arbitrary.

Our views on the questions here presented are well summarized by the Supreme Court of New Hampshire in the case of *State* v. *Richardson*, 27 A. 2d 94, involving a statute of that state identical in substance and purpose with the ordinance in question here. The statute (P. L., c. 118, s. 21) provides that boys under ten and girls under sixteen shall not "sell or expose or offer for sale newspapers, magazines,

periodicals or other merchandise in any public street or public place." The New Hampshire statute was held to be inapplicable to the identical activity as that here involved. The reasons there expressed present forceful argument here that for the same cause the ordinance here should be held unconstitutional. Chief Justice Allen said:

> "It is thought that the activity in which the boy under the defendant's leadership was engaged is not within the tenor and spirit of the prohibition of sales in public places. His service was not fairly to be classified as a business enterprise or as work, in the ordinary sense of words. To use a common expression, he was not exploited to help as a source of family income and material resources or to promote the defendant's financial welfare. Any exploitation of the boy was for other than pecuniary ends. He was performing a service under his mother's auspices, and the few cents he received were no impaction on the controlling religious character of his service, so as thereby to transform it into one of employment or work. The money-making feature of his service is too insignificant to receive notice as a factor modifying a strictly religious engagement into one with business attributes. The boy was not a newsboy on the occasions in question, and an occupational element, even of temporary duration, is not to be ascribed to his activity. Nor is there any claim that his education required by law was disturbed or menaced....
>
> "The State's argument that the statute was partly designed to protect the morals of young children by keeping them off the streets and out of public places, is not impressive. So far as concerns the case, the boy was in his mother's custody and general charge. In respect to the statute, it would be a clearly unreasonable discrimination that young persons might be on the streets with nothing to do, while others might not if they had some occupation there.

" . . . The facts do not constitute a mischief or evil which the legislation undertakes to suppress."

The children were preaching, ministering the gospel message, not *selling*. Preaching the gospel of the kingdom of God is the proclaiming to others the Scriptural truths of and concerning Jehovah God and His Kingdom, The Theocracy, under Christ Jesus. From the Scriptural standpoint it is not unusual that a child should teach and preach the gospel at a very early age. When Jesus was twelve years old and long before He was anointed with the holy spirit, he preached and taught as one of Jehovah's witnesses in the temple where he confounded the wise men and astonished them with his wisdom and statements. (Luke 2:46, 47) Timothy, long before he reached the age of maturity and while yet a small child, also taught and preached. He accompanied the apostle Paul, who preached publicly in the market places, on the streets and from house to house. See Acts 16:1-3; also 1 Timothy 4:12 where Paul writing to his 'son of faith', Timothy, said: "Let no man despise thy youth; but be thou an example of the believers, in word, in conversation, in charity, in spirit, in faith, in purity." Samuel was consecrated for service in the temple when very small and of tender age.—1 Samuel 1:24; 2:11, 28. See also Jeremiah 1:6, 7.

Christ Jesus condemned the Pharisees because of their effort to prevent and ridicule the following of little children after him. He said: "Suffer little children to come unto me, and forbid them not; for of such is the kingdom of God." (Luke 18:16) See also Luke 11:52; Matthew 18:1-6; Psalm 8:2; 148:12, 13; Proverbs 8:32.

Therefore it is unreasonable and unscriptural to contend that it is not proper for a child to engage in publicly giving praise to Jehovah God by acting as His witness in distribution of literature explaining Bible prophecy and present day fulfillment thereof. It should be borne in mind that this is the primary way that Jehovah's witnesses worship and

serve Almighty God and to deny this right to the children through punishing the parent because the children exercise such right is to deny to them freedom of worship of Almighty God, which freedom alone gives freedom from want and from fear.

The holding of the court below is in conflict with this court's decision in the case of *Meyer* v. *Nebraska,* 262 U. S. 390, where was set aside a conviction of a person who taught the German language to children in public schools contrary to a state statute. It was held that the statute infringed the right of the individual to marry, establish a home, bring up children and to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The judgment of the court below is contrary to this court's holding in *Pierce* v. *Society of Sisters,* 268 U. S. 510, where the Oregon Compulsory Education Law requiring all children to attend *public* schools unreasonably abridged the constitutional right of parents to direct the upbringing and education of children under their control. See also *Allgeyer* v. *Louisiana,* 165 U. S. 578, 589; and *Berea College* v. *Kentucky,* 211 U. S. 45, 67.

The sound and constitutional rule is that the liberty of the parent may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. *Lawton* v. *Steele,* 152 U. S. 133, 137. See *United States* v. *Carolene Products Co.,* 304 U. S. 144, 152; *Schneider* v. *State,* 308 U. S. 147, 162-164; and *Herndon* v. *Lowry,* 301 U. S. 242.

Before these inherent freedoms can be abridged there must be presented some clear and present danger that the act will immediately invade rights of others and be inconsistent with the welfare of the children, and be immediately inconsistent with the peace and safety of the state. *Bridges*

v. *California,* 314 U. S. 252. Admittedly there is no clear and present danger that the evil will result that is claimed by the state in this case. Also there is no rational relation between the ends aimed for and the means employed by the ordinance. See Freund, *The Police Power,* pp. 133, 497.

If the validity of this ordinance as construed and applied to the petitioner be sustained there is nothing to prevent police officers of the City of Portland from instituting proceedings in the Court of Domestic Relations of the State of Oregon for the County of Multnomah to deprive petitioner of the custody of the children. Indeed section 16, subsection (c), of said ordinance provides that if the child is under 18 years of age and is permitted by the parent to violate the ordinance, then the police shall apprehend the child as a juvenile delinquent to be brought before said juvenile court and dealt with according to law.

We submit that the next logical step for the Portland officials to take is to break up the homes of Jehovah's witnesses because of the faithfulness of their children to their covenant to serve Jehovah God. Indeed it is true concerning Jehovah's witnesses today as it was in times of old with Jehovah's faithful prophet Daniel. See Daniel 6:5 where it is written, "Then said these men, We shall not find any occasion against this Daniel except we find it against him concerning the law of his God."

The ordinance is not regulatory but is clearly unconstitutional and void because it is absolutely prohibitory as construed and applied to activity of the petitioner and her children. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, *a fortiori,* invalid." (Reed, *J.,* in *Jones* v. *Opelika,* 316 U. S. 584, 595-596.) Ordinances of Los Angeles, Milwaukee and Worcester containing prohibitory provisions were declared invalid and unconstitutional in *Schneider* v. *State,* supra. In *Hague* v. *C. I. O.,* 307 U. S. 496, 501, 518, the ordinance declared unconstitutional forbade any person to "distribute or cause to be distributed or strewn about any street or public place

any newspapers, paper, periodical, book, magazine, circular, card, or pamphlet." See also *Thornhill* v. *Alabama*, 310 U. S. 88, and *Carlson* v. *California*, 310 U. S. 106.

The ordinance has been construed so as to read, in effect, as follows: 'It shall be unlawful for any child under the age of eighteen years to worship Almighty God within the City of Portland.' If the ordinance expressly so provided all persons, even the least informed, would admit that it was void and a nullity. From the construction given the ordinance and its application in this case it must be conceded that it is unconstitutional and void for the reason that it abridges and prohibits worship of Almighty God by any girl under the age of eighteen years, and denies the right of the parent to direct that girl in the way she should go.

Conclusion

It is submitted that this case is one calling for the exercise by this Court of its supervisory powers under Section 237 (b) of the Judicial Code [28 U.S.C.A. 344 (b)] and Rule 38, paragraph 5 (a), of Rules of this Court. To that end this petition for writ of certiorari should be granted so as to correct the assigned errors committed, and the judgment rendered, by the Circuit Court of Multnomah County, Oregon, against petitioner, which judgment should be reversed.

Respectfully submitted,

HAYDEN C. COVINGTON
117 Adams Street
Brooklyn, New York
Counsel for Petitioners